

**DECISION**



*Fitzmaurice*  
*11874*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-205724**

**DATE: June 17, 1982**

**MATTER OF: Logistical Support, Inc.**

**DIGEST:**

1. GAO finds no basis to question agency's use of procurement format for mess attendant services where contentions raised by protester have been considered under prior protests involving same procurement format and were rejected by GAO.
2. Protester has not shown that agency's procurement format or GAO's decisions upholding agency's use of format are in any way contrary to guidance provided by recent Executive order concerning need for improved Federal procurement process.
3. GAO will not conduct audit of procurement format where protester has failed to demonstrate value of committing GAO's limited resources to such a review.

Logistical Support, Inc. (LSI), protests any award under invitation for bids (IFB) No. N00244-82-B-2018, issued by the Naval Supply Center (Navy), San Diego, California. The IFB solicited bids for mess attendant services for the Naval Air Facility, El Centro, California.

LSI argues that the IFB is fundamentally defective. However, we find nothing improper with the format which the Navy used for this procurement.

The Navy's format establishes an estimated maximum quantity of service units (mess attendant man-hours) needed to perform the contract. This quantity is then multiplied by a minimum service unit rate which is based

on the applicable Department of Labor wage determination and other factors estimated by the agency to be part of a contractor's labor expense and this service unit rate becomes the agency's billing rate. After these two numbers have been multiplied together, the figure reached fixes the agency's maximum labor costs under the contract. Each bidder is required to use this figure in its bid.

By using a maximum number of manning hours plus a fixed-service unit rate, the agency hopes to ensure that any successful bidder will be able to meet the minimum acceptable performance standards required for the contract as well as comply with the wage provisions of the Service Contract Act, 41 U.S.C. §§ 351-358 (1976). If a bidder should want to pay its employees higher wages or fringe benefits than those required by the appropriate Department of Labor wage determination, those increased costs are to be incorporated in the bidder's "Management and Support Price." The general purpose of the management and support price is to allow bidders an opportunity to include in their bids a sum to cover their management costs, overhead and profit. Thus, price competition occurs only under the item for management and support.

LSI has previously protested this format on several different grounds and each protest was denied. Logistical Support, Inc., B-197488, November 24, 1980, 80-2 CPD 391; Logistical Support, Inc., B-199933, February 10, 1981, 81-1 CPD 87; Logistical Support, Inc., B-200030, B-200051, B-200052, May 5, 1981, 81-1 CPD 342; Logistical Support, Inc., B-203739, B-203782, September 15, 1981, 81-2 CPD 218. In these decisions, we held that the imposition of a mandatory service unit rate on the bidders was not improper since bidders were given sufficient flexibility to price the item for management and support to adjust bids to fit particular needs. We also rejected the argument that the solicitation was so structured that a service contract was transformed into an unauthorized personal service contract. We further stated that there was no requirement for an agency to procure at a lower price without intelligent reference to the particular needs to

be served and that LSI had not shown that the decision to use the experimental procurement format was unreasonable. Finally, we rejected LSI's argument that the format was inconsistent with Office of Management and Budget Circular A-76 on the grounds that the provisions of the circular establish Executive policy rather than legal rights and responsibilities and, therefore, compliance with the circular was not an issue within our bid protest function.

Under the present solicitation, LSI once again argues that the Navy's format subverts the competitive bidding system, results in increased contract costs, as well as additional administrative costs, and encourages abuse and waste. However, we believe that our prior decisions adequately addressed all of LSI's contentions.

As part of its latest argument, LSI refers to Executive Order No. 12352, 47 Fed. Reg. 12125, March 22, 1982, entitled "Federal Procurement Reforms." More specifically, LSI directs our attention to those sections of the Executive order--1(d) and 1(i)--which require the heads of the executive agencies to establish "criteria for enhancing effective competition and limiting non-competitive actions" and to designate a "Procurement Executive" to oversee the procurement systems developed under the Executive order. LSI indicates that, despite our prior holdings that the use of this particular procurement format is "legal," there is a need to determine whether this format is "right or wrong," especially in view of Executive Order No. 12352. In LSI's opinion, our prior holdings are in violation of Executive Order No. 12352.

We do not agree. The major purpose of Executive Order No. 12352 is to establish a policy and guidelines for the reform of the Federal procurement process with an ultimate goal of making the Federal procurement process more effective and cost efficient. It is clear from the various responses that the Navy has made to LSI's several protests that, in the Navy's opinion, its procurement format is in line with Executive Order No. 12352's objective of a more effective and cost efficient Federal procurement process. LSI obviously disagrees with this, but, as we have indicated in our prior decisions, it is the Navy's responsibility to determine its minimum needs

and the best way of accommodating those needs and we will not question that determination absent a clear showing that it is unreasonable. See, for example, Logistical Support, Inc., B-200030, B-200051, B-200052, May 5, 1981, 81-1 CPD 342. We have held before and hold here again that LSI has not shown that the Navy's determination to use the procurement format is unreasonable, but only that LSI disagrees with the Navy's minimum needs determination. Therefore, we do not find that the Navy's use of the procurement format or our prior decisions upholding the Navy's actions are in any way contrary to the policy and guidelines established by Executive Order No. 12352.

Insofar as LSI's argument that we should determine whether the use of the Navy's procurement format is "right" rather than "legal" can be construed as a request that we conduct an audit of this Navy program, we find no basis for such action. Under our audit function, we review a broad spectrum of Federal activities with limited resources. Consequently, we are forced to make critical decisions regarding which reviews we will undertake in terms of obtaining the greatest benefit for the resources utilized. See Saft America, Inc., B-199852, January 30, 1981, 81-1 CPD 53. We do not believe that the information which LSI has furnished us indicates that the possible benefits to be obtained from a review of the Navy's use of this particular format for the procurement of mess attendant services will outweigh the benefits that might be obtained by utilizing our limited funds and personnel on other investigations.

We deny the protest.

*for Harry R. Van Cleave*  
Comptroller General  
of the United States